



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC094

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the CVOW-C Wind Energy Facility offshore of Virginia

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application for Letter of Authorization; request for comments and information.

SUMMARY: NMFS has received a request from the Virginia Electric and Power Company, also known as Dominion Energy Virginia (Dominion Energy), for authorization to take small numbers of marine mammals incidental to the development of the Coastal Virginia Offshore Wind Commercial Project (CVOW-C) in Lease Area Outer Continental Shelf (OCS)-A-0483 off of Virginia over the course of 5 years beginning on March 4, 2024. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of Dominion Energy's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on Dominion Energy's application and request.

DATES: Comments and information must be received no later than *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: Comments on the applications should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West

Highway, Silver Spring, MD 20910 and electronic comments should be sent to

ITP.Potlock@noaa.gov.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period.

Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at

<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Kelsey Potlock, Office of Protected Resources, NMFS, (301) 427-8401. An electronic copy of Dominion Energy's application may be obtained online at: *<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>*. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On February 16, 2022, NMFS received application from Dominion Energy, requesting authorization to take marine mammals incidental to the development of CVOW-C in the BOEM Lease Area (OCS)-A-0483 Commercial Lease of Submerged Lands for Renewable Energy Development off of Virginia. In response to our comments, and following extensive information exchanges with NMFS, Dominion Energy submitted a revised application on August 9, 2022 that we determined was adequate and complete on August 12, 2022. Dominion Energy requested the regulations and subsequent 5-year Letter of Authorization (LOA) be valid from March 4, 2024 through March 3, 2029.

Dominion Energy plans to conduct the following activities associated with the wind farm construction: vibratory and impact installation of wind turbine generators (WTG) monopiles foundations and offshore substation (OSS) jacket foundations; temporary use of goal posts to guide installation activities during the trenchless installation by impact pile driving; vibratory installation and removal of temporary cofferdams using sheet piles at the sea-to-shore transitions; site characterization surveys using a range of frequencies; placement of scour protection; and export cable trenching, laying, and burial. Vessels will be used to transport crew, supplies, and materials to the project area and to support pile installation. A subset of these activities (*i.e.*, installing piles using impact and vibratory pile driving; site characterization surveys) may result in the take, by Level A harassment and Level B harassment, of marine mammals. Therefore, Dominion Energy requests authorization to incidentally take marine mammals.

Specified Activities

In Executive Order 14008, President Biden stated that it is the policy of the United States to organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of its economy; increases resilience to the impacts of climate change; protects public health; conserves our lands, water, and biodiversity; delivers environmental justice; and spurs well-paying union jobs and economic growth, especially through innovation, commercialization, and deployment of clean energy technologies and infrastructure. Furthermore, this project would directly support the goals of the Virginia Clean Economy Act passed by the Virginia General Assembly in 2020, which supports the development of clean and reliable offshore wind energy to be developed by 2028 and consist of approximately 2,500 to 3,000 MW of energy.

Through a competitive leasing process under 30 CFR 585.211, Dominion Energy was awarded Commercial Lease OCS-A 0483 offshore of Virginia and the exclusive

right to submit a construction and operations plan (COP) for activities within the lease area. Dominion Energy submitted a COP to BOEM proposing the construction, operation, maintenance, and conceptual decommissioning of the CVOW-C project, a 2,500 to 3,000 megawatt (MW) commercial-scale offshore wind energy facility with a Lease Area covering approximately 112,799 acres (456.48 km²) and located 27 nautical miles (50 km) off of the coastline of Virginia Beach. Per the ITA application, CVOW-C would consist of up to 205 WTGs with associated monopile foundations, up to three OSSs with associated jacket foundations, and one transmission cable-to-shore.

Dominion Energy anticipates that activities potentially resulting in the take of marine mammals could occur for the life of the requested 5-year Incidental Take Regulation (ITR) and associated Letter of Authorization (LOA). This includes:

- Several construction-related high-resolution site assessment geophysical surveys using acoustic sources <180 kilohertz (kHz) for up to 1,108 days during all 5 years (with varying effort based on survey year);
- The installation of up to 205 WTGs monopile foundations; each foundation would be a tapered (*i.e.*, one end has a larger diameter than the other end) 7.5/9.5-meter (m) pile by vibratory and impact pile driving;
- The installation of up to three OSSs jacket foundations using four pin piles (2.8-m) each by vibratory and impact pile driving;
- The installation and removal of up to nine temporary cofferdams using steel sheet piles by vibratory pile driving at the offshore nearshore trenchless installation punch-out for the burial of the direct pipe west of the firing range at the State Military Reservation in Virginia Beach; and,
- The installation of temporary goal posts (*i.e.*, a steel support structure to support the direct pipe installation).

We note that Dominion Energy is not requesting take incidental to the detonation of munitions and explosives of concern or unexploded ordnances (MEC/UXOs) during the effective period of the regulation.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the Dominion Energy's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by Dominion Energy, if appropriate.

Dated: September 12, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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